

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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MOTOROLA MOBILITY, INC.,	)	
Plaintiffs,	)	Civil Action No. 3:10-cv-826
v.	)	District Judge Barbara B. Crabb
MICROSOFT CORPORATION,	)	Magistrate Judge Stephen L. Crocker
Defendant.	)	
	)	
	)	

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**JOINT PRELIMINARY PRETRIAL REPORT**

Pursuant to Federal Rule of Civil Procedure 26(f) and this Court's Standing Order Governing Preliminary Pretrial Conferences, counsel for Plaintiff Motorola Mobility, Inc. ("Motorola Mobility") met and conferred with counsel for Defendant Microsoft Corporation ("Microsoft") on February 23, 2011 regarding a discovery plan and case schedule. The parties now submit this Joint Preliminary Pretrial Report.

## I. PROPOSED DISCOVERY PLAN PURSUANT TO FED. R. CIV. P. 26

### A. Case Schedule

The parties propose the following trial schedule:

Event	Date Proposed by Motorola Mobility	Dates Proposed by Microsoft
Filing	December 23, 2010	
Preliminary Pretrial Conference	March 2, 2011	
Deadline for Initial Disclosures Pursuant to Rule 26(a)(1)	March 9, 2011	
Deadline to Amend Pleadings	March 11, 2011	
Deadline to Add Additional Parties	March 18, 2011	
Deadline for Parties to Submit Joint Proposed Protective Order	March 18, 2011	
Deadline to Disclose Initial Infringement Contentions and Asserted Claims	May 2, 2011	
Deadline to Disclose Initial Invalidity and Unenforceability Contentions	May 23, 2011	June 1, 2011
Deadline to Exchange List of Claim Terms and Proposed Constructions	June 3, 2011	June 17, 2011
Deadline to Exchange Amended and Supplemental Proposed Constructions	June 17, 2011	July 1, 2011
Deadline to File Opening Claim Construction Brief (Simultaneous briefs by all parties)	July 1, 2011	July 21, 2011
Deadline to File Responsive Claim Construction Brief (Simultaneous briefs by all parties)	July 22, 2011	August 11, 2011
Claim Construction Hearing (if granted)	July 29, 2011	August 16, 2011

Event	Date Proposed by Motorola Mobility	Dates Proposed by Microsoft
Deadline to File Opening Expert Reports	August 26, 2011	October 14, 2011
Deadline to File Rebuttal Expert Reports	September 23, 2011	November 14, 2011
Deadline to File Dispositive Motions	October 3, 2011	November 28, 2011
End of Discovery	January 6, 2012	February 24, 2012
Deadline for all Rule 26 Disclosures	February 3, 2012	March 30, 2012
<i>In limine</i> motions filed and served	February 3, 2012	March 30, 2012
Settlement Letters Submitted to Clerk	March 2, 2012	
Deadline for all Rule 26 Objections	March 2, 2012	April 27, 2012
Oppositions to <i>in limine</i> motions filed and served	March 2, 2012	April 27, 2012
Final pre-trial conference	March 22, 2012	May 17, 2012
Trial	April 2, 2012	May 29, 2012

## B. Protective Order

The parties anticipate the need for a Protective Order to ensure adequate protections are in place governing disclosure of confidential and/or commercially sensitive materials. Because of the pendency of other actions between the parties, the parties are attempting to develop a uniform Protective Order that can be entered in all of their actions.

## C. Source Code Production

The parties anticipate the need for a Source Code Agreement to ensure adequate protections are in place for the production and use of electronic source code by the parties. The parties are conferring on specific procedures to allow the parties' counsel and expert consultants

reasonable access to such source code. Because of the pendency of other actions between the parties, the parties are attempting to develop a uniform Source Code Agreement that can be entered in all of their actions.

**D. Modifications to Limitations on Discovery Imposed by the Federal Rules**

**1. Interrogatories**

The parties agree that each side shall be entitled to forty (40) interrogatories.

**2. Requests for Admission**

The parties agree that each side shall be entitled to fifty (50) requests for admission, excluding requests for admission that are solely for purposes of authenticating documents.

**3. Depositions**

Motorola Mobility's Proposal: Each side shall be entitled to take twenty-five (25) fact depositions without seeking leave of Court.

Microsoft's Proposal: Each side shall be entitled to take fifteen (15) fact depositions without seeking leave of Court.

The parties agree that the above limit on depositions does not include depositions of expert witnesses and that the durational limits of Federal Rule of Civil Procedure 30(d) apply. With regard to testimony under Federal Rule of Civil Procedure 30(b)(6), seven (7) hours of 30(b)(6) testimony shall count as one fact deposition and shall count against the deposition limit.

**E. Expert Discovery**

The parties agree that notes taken by the parties' experts in the course of the preparation of their reports, drafts of the expert reports, and all communications between counsel for the parties and their experts (including, but not limited to, emails and other written

correspondence) (all of the foregoing hereinafter referred to as "Expert Work Product") need not be retained and shall be not produced in this or any other action.

Expert Work Product shall not include communications, information and things that are relied upon by the expert in his or her opinions, or which otherwise form the basis of the expert's report.

**F. Electronic Service**

The parties hereby consent in writing that service by electronic means shall be allowed as set forth in Federal Rule of Civil Procedure 5(b)(2)(E) and that such service shall be deemed complete upon transmission, provided the sender does not receive any indication that such transmission was unsuccessful. The parties agree that a document is deemed served on a particular day if sent by midnight Central Time on that calendar day; otherwise it is deemed served on the next calendar day. The parties will meet and confer regarding service lists, but in the absence of additional agreement, the parties will serve outside counsel via the email addresses shown on the signature page.

**G. Privilege Log**

Because of the pendency of other actions between the parties, the parties are attempting to develop a uniform approach to privilege logs that can be followed in all of their actions.

**H. Electronic Discovery**

The parties are conferring regarding the logistical aspects of electronic production.

## II. INFORMATION REQUIRED BY THIS COURT'S STANDING ORDER

### A. Nature of the Case

This is an action for patent infringement. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Motorola Mobility asserts five (5) patents against Microsoft: U.S. Patent Nos. 6,992,580; 7,106,358; 6,686,931; 7,088,220; and 5,738,583. Motorola Mobility seeks permanent injunctive relief as well as damages for the alleged infringement. Motorola added U.S. Patents 7,088,220 and 5,738,583 through an Amended Complaint on February 14, 2011. Microsoft has yet to respond to Motorola's Amended Complaint. Microsoft had previously counterclaimed, asserting five (5) patents against Motorola Mobility: U.S. Patent Nos. 6,374,276; 7,454,718; 6,822,664; 7,421,666; and 6,256,642. Microsoft seeks permanent injunctive relief as well as damages for the alleged infringement.

Microsoft has moved to transfer this case to the Western District of Washington pursuant to 28 U.S.C. § 1404, where this Court on February 18, 2011 recently transferred the 10-CV-0699 action listed below pursuant to 28 U.S.C. § 1404. Motorola Mobility filed its opposition to the motion to transfer this case on February 24, 2011.

### B. Other Pending Cases

Several other cases are pending between Microsoft and Motorola Mobility, including:

- *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 3:10-cv-00700-bbc (W.D. Wis.) (now stayed by agreement in view of ITC Investigation No. 337-TA-752)
- *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 3:10-cv-00699-bbc (W.D. Wis.)
- *Motorola Mobility, Inc. v. Microsoft Corp.*, No. 1:10-cv-24063-FAM (S.D. Fla.)
- *Microsoft Corp. v. Motorola Inc.*, No. 2:10-cv-01577-JLR (W.D. Wash.) (now stayed by agreement in view of ITC Investigation No. 337-TA-744)

- *Microsoft Corp. v. Motorola, Inc. and Motorola Mobility, Inc.*, No. C10-1823-JLR (W.D. Wash.)
- *In re Certain Gaming & Entertainment Consoles, Related Software, & Components Thereof*, ITC Investigation No. 337-TA-752
- *In re Certain Mobile Devices, Associated Software, and Components Thereof*, ITC Investigation No. 337-TA-744

**C. Factual and Legal Issues to be Resolved at Trial**

The parties anticipate that the following issues of fact and law may need to be resolved in the course of this case or at trial:

- (a) The proper construction of the claims of the patents asserted by the parties;
- (b) Whether any of the patents asserted by Motorola Mobility is infringed by any of Microsoft's products;
- (c) Whether any of the patents asserted by Microsoft is infringed by any of Motorola Mobility's products;
- (d) Whether any of the asserted patents by any party is invalid or unenforceable;
- (f) Whether any injunctions should issue;
- (g) If one or more of the asserted patents are infringed and not invalid, what damages and/or other relief would be appropriate;
- (h) If one or more of the asserted patents are infringed and not invalid, whether such infringement was willful and deliberate;
- (i) If any infringement was willful and deliberate, whether increased damages should be awarded;
- (j) Whether any party is entitled to attorney's fees under 35 U.S.C. § 285 or costs.

**D. Descriptions of Any Forthcoming Pleading Amendments**

The parties have included in their proposed Case Schedule a deadline for amendments to the pleadings. After that date, the parties agree promptly to seek leave of the Court to amend their pleadings if warranted by newly discovered facts or evidence.

**E. Identity of Any New Parties**

The parties have included in their proposed Case Schedule a deadline for adding additional parties. Neither party is currently aware of any additional necessary parties. However, the parties require discovery to identify whether all the appropriate parties are part of this action.

**F. Estimated Length of Time Required for Trial**

The parties expect that the trial can be completed in eight (8) to ten (10) days.

**G. Other Matters Affecting the Just, Speedy and Inexpensive Disposition of this Case**

The Parties will work cooperatively to identify any opportunities to streamline the case, including exploring the possibility of stipulating to any undisputed facts. Each Party will also consider whether any issues can be resolved prior to trial via the filing of dispositive motions.

Dated: February 25, 2011

Respectfully submitted,

/s/ Rebecca Frihart Kennedy

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